SUPREME COURT OF THE UNITED STATES.

No. 368.

THE SCHOONER JENNY AND CARGO, HALE & CO. ET AL., CLAIMANTS AND APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Order of sale of vessel and cargo.—From minutes of April 18th, 1865.*

District court of the United States of America for the eastern district of Louisiana, holding sessions in the city of New Orleans, February term, A. D. 1865.

NEW ORLEANS,
Tuesday, the 18th day of February, A. D. 1865.

Court met pursuant to adjournment. Present, the honorable Edw. H. Durell, judge.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

Ordered that the schooner Jenny, her tackle, apparel, and cargo be sold by the marshal after due compliance with the legal formalities, the proceeds of the sale to be deposited as the law directs, and held subject to the further orders of the court.

True copy from the minutes.

[SEAL.] W. S. BENEDICT, *D'y Clerk.*

2 *Marshal's return.—Filed May 16th,* 1865.

Received April 24th, 1865, and, in obedience to the within order, I caused to be offered for sale the property named within, having first advertised the said property ten days in the True Delta, a daily newspaper printed and published in this city, in which the day, hour, place, and terms of sale were fully set forth; and having complied with all the previous legal requisites, the same was sold to the highest bidder for cash at the Planters' press, corner of Annunciation and Richard streets, on Monday, the 8th day of May, 1865, at 12 o'clock m., in the lots, to the purchasers, and at the prices set forth in the proces verbal of G. A. Hall, U. S. prize auctioneer, hereto annexed.

Whereby the gross proceeds of said sale amounted to eleven thousand and thirty-one dollars 59 cents, which amount I have paid over to Charles Claiborne, the clerk of the U. S. district court, to await the further order of the judge of said court, having taken from said clerk duplicate receipts as below.

Reference is also made to the printed catalogue hereto annexed, as the law requires.

H. BAUDOUIN, *Chief Dep'y.*

3 Received from Cuthbert Bullitt, United States marshal, eleven thousand and thirty-one dollars fifty-nine cents, being, as he saith, the gross proceeds of the above-mentioned sale, the moneys to be disposed of as the court directs, and for which I have signed duplicate receipts. $11,031 59.

W. S. BENEDICT, *D'y Clerk.*

N. O., May 16th, 1865.

Indorsement:

U. S. MARSHAL'S OFFICE, *July 27th*, 1865.

Received from Charles Claiborne, clerk U. S. district court, the sum of eleven thousand and thirty-one dollars 59 cents, which sum is to me returned as having been deposited with him through error, and which is held by me subject to the order of court.

A. BAUDOUIN, *Chief Dep'y.*

Proces verbal.

I, G. A. Hall, U. S. prize auctioneer, do hereby certify that under and by virtue of an order of the honorable district court of the United States, eastern district of Louisiana, as directed to the United States marshal for the district aforesaid, in suit by the United States *vs.* The Schooner Jenny, her tackle, &c., and cargo, suit No. 7743 of the docket of said court.

4 I offered the schooner Jenny, her tackle, &c., and cargo for sale at public auction on Monday, the 8th day of May, 1865, at 12 o'clock m., at the Planters' press, corner of Annunciation and Richard st's, at which sale the same was sold for cash, at the prices, to the purchasers, and in the lots as hereinafter set forth, to wit:

Purchasers.	Amount.
J. H. Pain, sch'r Jenny, her tackle, apparel, &c.....	$2,500 00
B. F. Millekin, chronometer.....	122 50
A. F. Jones, 15 bales cotton, w'g 5,203 lbs, at 31¼ c....	1,625 94
A. F. Jones, 35 bales cotton, w'g 11,233 lbs, at 29½ c...	3,313 73
A. F. Jones, 32 bales cotton, w'g 10,803 lbs, at 24¾ c...	2,673 74
B. F. Millekin, 15 bales cotton, w'g 4,380 lbs, at 16½ c..	722 70
B. F. Millekin, 4 bales cotton, w'g 1,390 lbs, at 5¼ c....	72 90
	11,031 59

(E. & O. E.)

G. A. HALL, *U. S. Prize Auctioneer.*

To Hon. CUTHBERT BULLITT,
U. S. Marshal, E. D. of La.

5 *Appraisement of vessel.—Filed May 6th*, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 3477.

To the honorable district court of the United States, eastern district of Louisiana:

We, the undersigned prize appraisers to this honorable court, duly appointed and sworn, have the honor to report that on the fifth day of May, 1865, we proceeded on board of the prize schooner Jenny for the purpose of ascertaining her value; and after a careful and thorough examination, find that she is about nine years old, built in

Milton, Florida; her length is seventy feet; her breadth of beam, twenty-four feet; depth of hold, five feet six inches, and eighty tons burthen.

She has a single deck, trunk cabin, yellow pine and cypress frame, with yellow pine beams and bindings, her bottom is iron fastened, and sheathed with zinc, with a centre-board in it.

6 She has on board two anchors, two chains, one kedge anchor, three water casks, camboose and house, two copper pumps, two compasses, one marine clock, and her sails are at the marshal's warehouse.

And we value and appraise the said schooner Jenny at the sum of four thousand dollars cash, ($4,000,) and no more.

Given under our hands this seventh day of May, 1865.

H. G. HEARTT,
RICH'D SWAIN,
U. S. Prize Appraisers.

Appraisement of cargo.—Filed May 6th, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

We, the undersigned prize appraisers of this honorable court, duly appointed and sworn, have the honor to report that we have this day carefully examined the cargo of the prize schooner Jenny, and are of opinion that the actual market value or wholesale prices of

7 the said merchandise are this day, and we do therefore appraise the same, as follows:

F. 15 bales strict good ordinary, 29 c.; V. 35 bales ordinary to good ordinary, 26 c.; J. 32 bales ordinary, 23 c.; I. 15 bales pickings, 12 c.; S. 4 bales paper stuff, 4 c.

H. G. HEARTT,
RICH'D SWAIN,
U. S. Prize Appraisers.

Appraiser's bill.—Filed May 11th, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

To appraiser's office, Dr.:

To appraisement of vessel, $2,500, at 1½ per cent.....	$37 50
To appraisement, turning out and in, probing, assorting, marking, numbering and classifying, unpaid labor on cargo, 101 bales cotton, part of 153, appraised Dec. 5, 1863, and reappraised 8th May, 1865, $8,531 59, at 2 per cent..	170 63

Received payment.

8 *Motion of U. S. marshal.—Filed May 18th, 1865.*

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

On motion of Miles Taylor, of counsel for Cuthbert Bullitt, U. S. marshal for said district, and on suggesting that by virtue of an order of this court issued and received by said marshal, on the 24th April, 1865, the said sch'r, her tackle, apparel, and furniture, and cargo, have been duly sold in conformity thereto, and that the proceeds arising from said sale have been, as by law directed, deposited in the registry of said court, and on further suggestion to the said court that the disbursements actually made by said marshal (not including his own fees) for the safe-keeping, storage, &c., of the said schooner and cargo, the whole of which will more fully appear by reference to a detailed statement thereof, accompanying this motion, and the court being satisfied by due examination of the items therein set forth, that the same are reasonable, legal, and proper, it is ordered that Charles Claiborne, clerk of said court, be and he is hereby authorized to pay to Cuthbert Bullitt, the said marshal, out of the above proceeds,
9 deposited as aforesaid, the amount of his said bill of disbursements, to wit, twenty-five hundred and ninety-four and $\frac{46}{100}$ dollars.

Submission on said motion.—From minutes of May 18th, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

The motion made by the marshal for the payment of certain disbursements was taken under advisement by the court.

Order to take rule.—From minutes of May 23d, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

Ordered that the marshal take a rule on the claimant to show cause why his bill of disbursements, amounting to $2,594 46, should not be paid out of the proceeds of the schooner and cargo.

10 *Rule on claimant by marshal.—From minutes of May 26th, 1865.*

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

On motion of Miles Taylor, of counsel for Cuthbert Bullitt, U. S. marshal for the E. D. of La., and on suggesting to the court that his disbursements in the above-entitled case, as shown by the account

herewith filed and duly sworn to, amount to the sum of $2,594 40; that said schooner and cargo had been sold under an order of this court, and that the proceeds of said sale have been deposited in the registry of this court in obedience to said order of sale, and that the said amount of disbursements is now due, and ought to be paid, it is ordered that the claimants, through their proctor, Edw. Briggs, esq., show cause on the 27th day of May, 1865, at 11 a. m., why the said sum of $2,594 40, amount of said disbursements, should not be paid out of the proceeds of said sale.

11 *Order, rule continued.—From minutes of May 27th,* 1865.

UNITED STATES
vs.
SCH'R JENNEY and CARGO. } No. 7743.

The rule taken by the marshal on yesterday was called up, when, on account of the indisposition of the claimant's proctor, it was ordered to be continued till Wednesday next, 31st ins't, at 11 a. m.

Order, rule continued.—From minutes of May 31st, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

By consent of counsel the rule herein returnable this day is continued till Friday, 2d proximo, at 11 a. m.

Order, rule continued.—From minutes of June 2d, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

The rule herein returnable this day was called up, and by consent of counsel continued indefinitely.

12 *Judgment decreeing claimants to pay costs, and refusal of damages.—From minutes of June 3d,* 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

On the preliminary trial of this cause, considering that the position of the Jenny when captured was a matter of doubt, and with a view to set this question at rest, the court allowed the captors further proof.

The result of the whole testimony satisfied the mind of the court that the Jenny was captured when anchored south of the line dividing the waters of the Rio Grande, and when, therefore, she was in neutral waters.

On that ground the court decreed her restitution, but entertaining

grave doubts as to the object of her voyage—so grave, indeed, that but for this consideration that she was captured in neutral waters the court would have decreed her condemnation—

It is now ordered and decreed that the costs and charges consequent upon the capture be paid by the claimants, and that damages be refused.

13 *Petition of appeal.—Filed June 29th, 1865.*

U. S. district court, in prize.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The petition of Hale & Co., J. Rosenfeld, Augustine Starke, and R. M. Elkes, claimants herein, respectfully represents that they are aggrieved by the final decree rendered herein on the 3d day of June present, and are advised that there is error therein to their prejudice; that the amount at issue exceeds the sum of two thousand dollars.

Wherefore they pray that an appeal be allowed them therefrom to the next term of the Supreme Court of the United States, upon their giving bond and security, conditioned according to law, in such sum as the court may direct.

EDW. BRIGGS, *Proctor.*

14 *Motion and order for appeal.—From minutes of June 29th, 1865.*

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

On motion of Edward Briggs, proctor for Hale & Co., claimants of the vessel, and J. Rosenfeld, Augustin Starke, and R. M. Elkes, the claimants of the cargo, and on his presenting a petition praying an appeal from the decree herein rendered on the 3d June inst. to the next term of the Supreme Court of the United States, it is ordered that the same be allowed as prayed for, returnable to said Supreme Court the first Monday of December next, upon giving bond in the sum of $250, with good and solvent security, conditioned as the law directs.

15 *Appeal bond.—Filed June 29th, 1865.*

District court of the United States, in admiralty.

UNITED STATES
vs.
SCHOONER JENNY, HER TACKLE, APPAREL, and cargo.

UNITED STATES OF AMERICA, *Eastern district of Louisiana:*

Know all men by these presents that we, Edw. Briggs, att'y for Hale & Co., A. Starke, J. Rosenfeld, and R. M. Elkes, claimants, as

principal, and A. Frerichs, as surety, are held and firmly bound unto the United States of America in the sum of two hundred and fifty ($250) dollars, to be paid to the said United States, or assigns, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated at New Orleans the 29th day of June, 1865.

Whereas the abovenamed claimants have appealed to the next term of the Supreme Court of the United States from a final judgment of the district court of the United States for said district, rendered against them on the 3d day of June, 1865, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the abovenamed appellant shall prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against him, if he fails to make his appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

EDWARD BRIGGS. [SEAL.]
A. FRERICHS. [SEAL.]

Signed, sealed, and delivered in presence of—
W. S. BENEDICT, *D'y Clerk.*

16 The solvency and sufficiency of the surety on the bond is approved and accepted.
June 29th, 1865.

E. H. DURELL, *Judge.*

17 *Bill of James Graham, ex marshal.—Filed August 3d,* 1865.

United States district court, eastern district of Louisiana.

UNITED STATES MARSHAL'S OFFICE,
New Orleans, September 2d, 1864.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

		Fees.	Disb'mts.
1863.			
October 16.	Order of seizure, $2; taking inventory, $5	$7 00	
	Attendance on prize com'rs' court,	4 00	
22.	Ad warrant, libel, and order	6 00	
23.	Monition published in N. O. Times,		$12 00
November 16.	Notice of trial, $2; petition and order, $2	4 00	
21.	Paid for carrying instruments to place of safety		50
	Order of court, $2; 30th, petition and order to sell, $2	4 00	

	22.	Discharging clerk's expenses		$10 00
	24.	Surveying 52 bales cotton, R. Swain		13 00
		Keen & Stanley, stevedores, bill for discharging		67 00
		James Murphy's bill for hauling		33 30
December	1.	Notice appointing D. Augustin, esq.	$2 00	
		Advertised sale in N. O. Times		6 00
	5.	Attendance at sale and delivery, $5; 3 proclamations, 90 c	5 90	
		Commissions on sale 52 bales cotton	132 25	
	16.	Notice of trial, $2; 2 summons, $1,	3 00	
1864.				
January	2.	Storage and labor in Planters' press		18 05
18				
Feb'ry	15.	Paid for unbending sails		5 00
March	5.	Notices to Planters' press and keeper of attachments, prov. court	2 00	
	7.	3 notices testimony, $1 50; 17th, 3 notices testimony, $1 50	3 00	
April	6.	3 notices trial	6 00	
May	3.	Wm. P. Noble's bill, hauling sails,		1 50
		L. Frigerio's bill, rating chronometer		2 50
July	5.	4 citations of appeal to Supreme Court	8 00	
	15.	Order to restore octant to captain	2 00	
August	23, 25.	Rule on claim'ts to sell, and 1 summons on pl'ff	4 50	
Sept'r	1.	Marshal's charges of custody from Oct. 1, 1863, to date, 317 days, $1 50		792 50
		Commissions on disbursements	19 31	
			212 97	961 35

James Graham, late U. S. marshal, being duly sworn, doth depose and say that the within bill is correct and true, and that the charges were actually incurred for the purposes therein set forth.

JAS. GRAHAM.

Sworn to and subscribed before me this 27th day of July, A. D. 1865.

K. LOEW, *D'y Clerk.*

Approved. E. H. DURELL, *Judge.*

Bill of Cuthbert Bullitt, U. S. marshal.—Filed August 3d, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES MARSHAL'S OFFICE,
New Orleans, May 17th, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

Marshal's disbursements:

1865.

April 24.	Publishing notice of sale in True Delta.....	$15 00
	Insurance in La. Mutual Ins. Co., 20,400, at ½ per cent., from 19th.....	102 00
May 4.	Bill storage and labor in Planters' press.....	368 65
8.	Bill posters and posting handbills.....	16 00
	Bill gov't weigher, to pickery and back, to sell,	25 25
	Bill boxing, picking, bagging, rope, &c.....	757 50
	Bill L. Frigerio, care of chronometer.....	9 50
9.	Paid drayage and labor on sails to place of sale.....	5 50
10.	Paid keeper of vessel from Sept. 2d, '64, to date, 217 days, at $2 50.....	627 50
	Storage on sails in warehouse, 8 months, $5..	40 00
	Marshal's custody of cargo from Sept. 2d, '64, to date, 251 days, at $2 50.....	627 50
		2,594 40

Cuthbert Bullitt, U. S. marshal, being duly sworn, doth depose and say that the above charges are correct and true, and that they were actually incurred for the purposes set forth therein.

CUTHBERT BULLITT, *U. S. Marshal.*

Sworn to and subscribed before me this 18th day of May, 1865.

K. LOEW, *D'y Clerk.*

20 *Marshal's supplemental bill.—Filed August 3d, 1865.*

United States district court, eastern district of Louisiana.

UNITED STATES MARSHAL'S OFFICE,
New Orleans, June 7th, 1865.

UNITED STATES
vs.
SCH'R JENNY and CARGO. } No. 7743.

Supplemental bill, add'l:

1865.

April 24.	Order of court to sell vessel and balance of cargo, $2; eng. copy for pub'n.....	$2 50
28.	Notified 2 prize com'rs and prize auct'r of sale	3 00

May 8.	Recording appraisement, $1; preparing for sale, attendance, and delivery, $15	$16 00
	Com'n on sale vessel, $6 25; com'ns on sale cargo, $42 65	48 90
	3 proclamations, 90 c.; rec'd'g proces verbal, $1; order to deliver vessel, $1	2 90
	Com'ns on disbursements, $55 92; return on bond exp's, $1	56 92
26.	Rule on proctor for cl'm'ts, $2; 29th, notice of trial on rule	4 00
	Total amount of fees	134 22
	To which add bill of disbursements filed	2,594 40
	Total amount marshal's costs and charges	2,758 62

Cuthbert Bullitt, U. S. marshal, being duly sworn, doth depose and say that the above bill is just and true, and the charges therein were actually incurred for the purposes set forth.

CUTHBERT BULLITT, *U. S. Marshal.*

Sworn to and subscribed before me this 14th day of July, 1865.

W. S. BENEDICT, *D'y Clerk.*

21 *Taxation of costs.—From minutes of August 3d, 1865.*

UNITED STATES *vs.* SCHR. JENNY and CARGO. } No. 7743.

Ordered, that the costs, charges, and disbursements in this case be taxed, allowed, and paid as follows, to wit:

District attorney, ½ per cent	$485 12
Clerk	328 45
Clerk, add'l	25 00
Jas. Graham, ex marshal	1,174 32
C. Bullitt, marshal	2,728 62
Prize commissioners	250 00
Harbor master	6 50
Quarantine bill	10 50
McDermott, for keeping	40 00
Auct'r, sale damaged cotton in 1863	120 90
Auct'r, sale vessel and cargo in 1865	132 81
Appraisers' charge on cotton in 1863	229 70
Appraisers' charge on sale cotton in 1865	85 63
Registrar	132 25
	5,774 80

22 District court of the United States, eastern district of Louisiana.

I certify that the foregoing 21 pages, together with the transcript of appeal in this case already on file in the Supreme Court of the United States, do contain and form a correct and complete transcript of the original record of the case of the United States *vs.* Schr. Jenny and cargo, No. 7743 of the docket.

In testimony whereof, I hereto set my hand and the seal of our court, at New Orleans, this 10th day of August, A. D. 1865, and the 90th year of the American independence.

K. LOEW, *D'y Cl'k.*

It is agreed that the record shall go up in this form, and that the transcript heretofore forwarded shall be considered as a part of it; the object of this agreement being merely to save the labor and cost of recopying it.

RUFUS WAPLES, *U. S. Att'y.*
EDWARD BRIGGS, *for Claimant.*

Filed January 16, 1866.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

THE UNITED STATES, libellants and appellants,
vs.
THE SCHOONER JENNY AND CARGO.
HALE & Co. *et al.*, claimants and appellants,
vs.
THE UNITED STATES.
} No. 100.

Appeals from the district court of the United States for the eastern district of Louisiana.

The schooner Jenny and her cargo were libelled as prize of war in the district court for the eastern district of Louisiana, having been captured within blockaded waters near the mouth of the Rio Grande, under British colors, by the United States ship Virginia, on the 6th October, 1863. Intervention was made on behalf of several parties, and on the 18th June, 1864, judg nent was rendered dismissing the libel. From this judgment the United States appealed. (Rec., pp. 50–51.) Subsequently, on the 3d June, 1865, a further judgment was rendered, decreeing costs and charges against the claimants; from this judgment the claimants appealed. (Supplemental Rec., pp. 45.)

The cargo consisted of 154 bales of cotton, in three lots, viz: One lot of 39 bales, marked A. S., shipped by Groas, Blerchy & Co., to Ruprecht & Fortner, N. Y., or order; one lot of 71 bales, marked S. R., shipped by Charles F. Jenny, to his own order, N. Y.; and one lot of 44 bales, marked R. M. E., shipped by same to H. Fersenheim, N. Y.; (see bills of

lading, Rec., pp. 30, 31.) These shipments all purport to have been made at the port of Matamoras. The bills of lading for the latter two lots, being those of Charles F. Jenny, are indorsed, that for 71 bales for delivery to "Hennings & Goesling, of New York, or order," and that for 44 bales to "R. M. Elkes, esq, or order." There is no evidence of the domicil of Elkes. These bills of lading are dated, respectively, 13th, 15th, and 14th September, 1863. The claims are as follows:

(1.) Captain Johnson, master of the Jenny, makes claim for *H. Fersenheim*, for 44 bales of cotton. (Rec., p. 10.)

(2.) Similar claim for *Joseph Rosenfield*, for 71 bales of cotton. (Ibid, 11.)

(3.) Similar claim for *Ruprecht & Fortner*, for 39 bales of cotton. (Ibid, 12.)

(4.) Similar claim for *Hale & Co.*, for the vessel. (Ibid, p. 13.)

These are bare claims by the master, provisional in form and effect, and were made by Captain Johnson without knowledge whether the ownership alleged in each existed. (His own testimony in preparatorio, Rec., pp. 4, 5, 6, interrog. 5, 14, 16, 28.)

(5.) A claim was put in for one *Augustin Starke*, for thirty-nine bales of cotton, by Charles Andre, representing himself as "lawful agent and bailee." (Rec., p. 17.)

(6.) A claim was put in for one *R. M. Elkes*, for forty-four bales of cotton, by Conrad Seiler, representing himself as agent and bailee. (Ibid, 18.)

It will be observed that the lot claimed for *Starke* is of like quantity to that claimed for Ruprecht & Fortner, and the lot claimed for *Elkes* agrees likewise with that claimed for Fersenheim.

No one of these claimants appeared in person, or exhibited any recognition of the ownership imputed to them respectively, by their alleged bailees.

Fersenheim is described as a loyal citizen of the United States, and a resident of New York, unable to appear; *Ro-*

senfield, a loyal citizen, etc., resident of New Orleans, now in Matamoras, and unable to appear; *Ruprecht & Fortner*, of New York, as in case of Fersenheim; *Hale & Co.*, as British subjects, residing at Matamoras, unable to appear; *Starke*, as a loyal citizen of the United States, now residing at Saltillo, in the republic of Mexico, and unable to appear; and *Elkes'* as a loyal citizen, etc., formerly resident of New York, "now in the Republic of Mexico," unable to appear. (This is the name, *without address*, to which one of Jenny's bills of lading to New York was indorsed. Rec., p. 31. The lot was the same consigned to Fersenheim.)

The aggregate quantity of cotton captured is 154 bales, in three lots, 39, 44, and 71 bales, respectively. The aggregate claimed would be 237 bales. It is sufficiently obvious that the claim of Ruprecht & Fortner, and that of Starke, are one claim, and that those of Fersenheim and of *Elkes* are likewise identical.

That the capture was made in American blockaded waters cannot be questioned, because there is nowhere any allegation to the contrary, and the judge was mistaken in the fact in what he has said on this point, as printed on page 5 of the supplemental record. The oversight is apparent upon examining the testimony *in preparatorio* of the master, the mate, and the passengers of the captured vessel. (Rec., p. 4, interrog. 3, 19, 36; Rec., p. 7, interrog. 2, 19; Rec., p. 9, interrog. 3.) The remainder of the testimony is emphatically to the point—(additional testimony, and report of the captor, Rec., pp. 45 to 50.)

It is claimed that this vessel was on an outward bound voyage to New York, with liberty to touch at Nassau, N. P., for the purpose of obtaining a permanent register, and that she was of British nationality. Our hypothesis is to the contrary of this, and if sustainable by the record, the case would involve but little discussion of law. We therefore, confine ourselves to the questions of fact, and submit for our argument an analysis of the evidence.

1.—*Anterior to capture.*

The captured vessel, now called the Jenny, was a Mobile built schooner, significantly called the "Southron," which had been sold by the sequestration commission of New Orleans, at some date anterior to the 18th March, 1863, at which time, it appears from an alleged copy of her registry, she was owned by one P. A. Fronty. (Rec., p. 32.) How she came to Matamoras we are not advised, but on the 21st April, 1863, we find her there, and the subject of the following transactions:

One *Julius Schlickum, of New Orleans*, as alleged, executes a formal bill of sale, (reciting therein the American certificate of registry, and averring his own exclusive ownership,) *to Hale & Co.*, of Matamoras, for a consideration of $7,000. The vessel is therein called the *Southron*. This bill is dated 21st of April, 1863, (Rec., p. 32.) On the same day, an instrument, similar in form to a power of attorney, in which Hale & Co. are mentioned as appointees and owners of the vessel, and in which one "*Jacob Rosenfield, merchant, of Houston, Texas*," is nominated as the attorney in fact, was executed by one *John P. Molony*, representing himself as one of the firm of Hale & Co., who signs the instrument with his own name only, without qualification. There is no proof in the record that any connection ever existed between him and the firm of Hale & Co. This instrument is expressly made irrevocable, and imparts powers of infinite substitution and devolution, at the pleasure of the appointee, over the vessel. The latter is therein called the *Jenny*, (Rec., p. 34.) This irrevocable instrument contains no clause whatever protecting any supposed title reserved by the grantors. All this at Matamoras.

A few days after these transactions, 27th of April, 1863, Molony makes, before the acting British vice-consul at Matamoras, a "declaration of ownership." He avers that he is one of the firm of Hale & Co., all of whom are "natural born subjects of her Britannic Majesty." (Rec., p. 33.) Thereupon, the vice-consul issues a provisional register of the Jenny, as a

British vessel. (R., p. 33) To this register is subjoined the following:

"NOTE.—This provisional certificate of registry continues in force only until the 27th day of October, 1863, or until she completes the voyage from Matamoras to some point at which there is a British registrar, whichever first happens. By the vice-consul," etc. (Rec., p. 34.)

Up to this time, Fronty (former owner) seems to have been the master. We next hear of the Jenny on the 29th of May, 1863, when *Johnson*, the present master, was employed by one *C. F. Jenny*, then located at the mouth of the Rio Grande, subsequently at Matamoras. (Rec., p. 5, interrog. 7.) On the 2d of July following she was at Havana. During this interval of about a month, (June,) she was making a voyage in which she carried corn from New Orleans to Matamoras, and from thence took 150 bales of cotton to Havana. (Rec., p. 5, interrog. 12.) It must have been upon the *termination of this voyage, at Havana*, that the shipping agreement, printed on page 26 of the record, was made, *for a new voyage 'from Havana* to Matamoras and *back to some port of discharge in the West Indies*," which can be no other than the very voyage which was frustrated by this capture. This is the more obvious from the fact that the provisional registry granted on the 27th of April at Matamoras, was to determine upon touching a point where a permanent registry could be procured, (but could serve the purpose of the voyage from New Orleans to Matamoras and thence, with cotton, to Havana,) while the record shows that the shipping agreement of July at Havana, was made under a *Havana provisional registry*, (necessarily superseding the former one,) which has not been produced. (Rec., p. 26.) *Rosenfield*, the nominee in the "power of attorney," who was domiciled in *Houston, Texas, as a merchant*, (Rec., p. 34,) doubtless conducted this previous cotton voyage, as the shipping agreement referred to, made 21st July, 1863, shows him listed as *supercargo*, from the 2d of July, *at Havana*. Under this agreement, the vessel, with Rosenfield, and a cargo, among which were 400 barrels of aguadiente, a contraband article, proceeded to Matamoras. (Rec., 5, interrog. 11, 12.)

The next shipping agreement was made at Matamoras before the expiration of the first, (which had expressly provided for a *return* voyage to the "West Indies,") and in contemplation of the "voyage to New York, via Nassau." The latter voyage, so called, was in substitution of the former, because it was stipulated for with men, some of whom entered at Matamoras on the 29th of August, (Rec., p. 5, interrog. 8,) little over a month after they had entered at Havana, and among these was the mate for both trips. (Rec., p. 27) This agreement purports that the provisional register of 27th of April at Matamoras, is still in force, and locates the vessel *there*, although the provisional register of Havana of a subsequent date (concealed) must have located her *there*. In a word, the last shipping agreement (under which the vessel was proceeding when captured) was evidently made for the purpose of disguising a *homeward bound voyage from Matamoras to the West Indies* as an *outward* bound voyage to New York. (Rec., pp. 26, 27; Testimony of master and mate *in preparatorio*, pp. 4 to 9.)

After arriving (probably in August) at Matamoras from Havana, the Jenny lay some time in the Rio Grande. Thus far, Hale & Co. have been known in the matter only as represented by Malony, and he has been known only in the writings of 21st April, in one of which he claims to represent Hale & Co. as appointors, and in the declaration of British ownership of 27th April. (Rec. pp. 32, 33, 34.) But Schlickum, in whose hands we first found the vessel at Matamoras, who hailed from *New Orleans*, is again concerned in her business; and Rosenfield, of *Houston, Texas*, the person who intervenes herein for 71 bales of cotton, hailing from N. O., and in whom a plenary and irrevocable control of her title was vested, we have seen, followed her to Havana and returned with her cargo of aguadiente, &c., and is now again, Sept., 1863, at Matamoras. C. F. Jenny, after whom the vessel was named in April, and who appointed her master and crew at the mouth of the river in May, (Rec. p. 5, interrog. 7,) has since that date established himself at Matamoras, and becomes the successor of Rosenfield, by indorsement dated 12th September, 1863, in which

Rosenfield "transfers" all his "powers" in the premises to Jenny. (Rec., 35.)

What real equities underlie these apparent legal relations, is necessarily obscure. That Rosenfield, who was an enemy by domicil, and Schlickum, who, being of New Orleans, was not a neutral, would have occasion for the name of a neutral at Matamoras, as owner of the vessel, is obvious, since she must acquire a neutral nationality in order to obtain the credentials of navigation for illicit trade. The expediency of possessing British character is manifest. Accordingly, it is not improbable that all these transactions respecting title were formal only, and that the vessel at the time of capture was an American ship, owned by Schlickum or by unknown American parties, of whom he was the agent. To this point we will revert. But that there was any ownership in Hale & Co., or even in Moloney, or, in other words, that she was a British ship, is rendered incredible by evidence to which we will presently turn.

The Jenny in this situation took out the necessary papers for a voyage—under the Matamoras provisional register referred to, of 27th April revived, the Havana one of late date being suppressed—from Matamoras to New York, via Nassau, N. P. (See manifest, Rec., p. 25; shipping agreement, p. 27, and bills lading, invoices, and clearance papers, pp. 28 to 36.) The cargo was of cotton, amounting in all to 154 bales. One lot of 39 bales was shipped by Groas, Blerchy & Co. to the order of Ruprecht & Fortner, New York; one lot of 71 bales, shipped by C. F. Jenny, to his own order; and a third lot of 44 bales, shipped by said Jenny to the order of H. Fersenheim, New York. The bills of lading are dated on the 13th, 14th, and 18th September, respectively. (Rec., pp. 30–31.) At the latest of these dates nearly the half of the cotton had not yet been laded. (Rec., p. 5, interrog. 11–13.) At the time of setting out on her voyage, the Jenny had on board 83 bales. (Ibid.) On the 10th September the acting British vice-consul had given a certificate of clearance, (Rec., pp. 35–36,) and on the 18th he gave a bill of health certifying that the Jenny is ready to depart "from the port of Matamo-

ras *for Nassau, N. P., and other places beyond the sea*, with six persons, including the master, and *no passengers*." (Rec., p. 38.) She now sets out with her papers, and others to be noticed, her complement of six persons, no passengers, an American flag concealed, (Rec., p. 4, interrog. 4,) and 83 bales of cotton, and crosses the bar at the mouth of the river under British colors. At this point, on the Mexican side, is Bagdad, near or at which the spot called "Boca del Rio," is occupied by a warehouse belonging to Julius Schlickum. (Mund's testimony, Rec, p. 10, interrog. 7.) From Schlickum's warehouse the remainder of the cargo was brought in lighters to the Jenny—71 bales—and loaded on the 1st or 2d October. (Ibid, and testimony in preparatorio, Rec., p. 5, interrog. 11–13, and p. 8, interrog. 30.) About the same time a passenger, named *Mund*, came on board. This was outside of the bar. It is doubtful whether at the time of lading these 71 bales she was lying in American waters. (Testimony of Blume, Rec., p. 47.) But there is no doubt that she moved several miles from that position after completing her lading, and anchored in American waters. (Subsequent proof, Rec., pp. 46, 47, 48.) On the morning of the 6th October she got under way and set out. After proceeding some miles, she was challenged by the United States ship Virginia, but refused to stop, and was brought to only by one or more shots. Thus she was captured. (Rec., 4 to 8, 45 to 50.)

2.—*Disclosures of the ship's papers, &c.*

Lieutenant Brown, of the capturing vessel, reports (Rec., p. 50) that he found discrepancies between the Jenny's clearance papers and her owner's instructions as to destination; between the ownership of the vessel as stated in the provisional register and as disclosed by other papers, and other discrepancies. But still more material inconsistencies exist. The papers found on board are printed in the record, beginning on page 25 and continuing to page 43. On the latter page follow two letters from Mund, the passenger, reporting the capture to his friends or associates.

From these papers it appears that *Julius Schlickum*, who,

as vendor to Hale & Co., per bill of sale referred to, was resident of New Orleans, (Rec., p. 32,) and from whose warehouse at Boca del Rio, or Bagdad, the 71 bales of cotton had been laded outside of the bar, and after clearance, (Rec., pp. 4, 7, 9,) *had plenary powers over the master and cargo.* Our position does not require us to affirm that this Schlickum was the agent of the Confederate public authorities in the ownership of the vessel and the carrying of their cotton to market; but such a suspicion will be seen to be not altogether gratuitous. Nor that *Jacob Rosenfield, of Houston, Texas,* merchant, (as a claimant herein, hailing from New Orleans, but "now at Matamoras," the same who at Havana became supercargo in July, and who had been from the 21st of April previous the "attorney" of Hale & Co., "owners,") was the active manager of the importation from the enemy's territory into Matamoras of the cotton of the confederacy.

The manifest (Rec., p. 25) of the whole cargo is signed by Charles F. Jenny, as shipper. But in swearing to the invoice of 71 bales (the lot laded by Schlickum) he *omits* the port of destination. (Rec., p. 28.) This lot was consigned to his own order, the bill of lading being indorsed "Deliver the within goods to Messrs. Hennings & Goesling, of New York, or order. Swiss property; insured through Messrs. Lemonier & Co., Liverpool. Matamoras, 18 Sept., 1863. Charles F Jenny." (Rec., p. 31.) These consignees are not among the claimants. The lot is the same that is claimed by Rosenfield Among the papers (Rec., pp. 36, 37) is the permit of the Mexican custom-house authorities. There is no such permit or clearance for any part of the cargo (83 bales) which was taken on board at Matamoras, but the Mexican papers refer only to the 71 bales above referred to, and purport to permit them to be shipped under the *open clearance* of the schooner Jenny. The clearance was not open. (Rec., p. 35.) These papers also suppose that the consignors were *Rosenfield and Starke,* and constituting the only evidence of regularity of the lading of these 71 bales, were granted upon the application of "Rosenfield & Co." Therefore, if Rosenfield (now claiming) was

the responsible shipper, the manifest, bill of lading, &c., showing Jenny as shipper, are fraudulent. And if Rosenfield was *not* the responsible shipper, then the goods got on board after leaving port was by a fraudulent procurement of Mexican permission. But these papers (of which no translation is in the record) contain a further and very significant clause. It seems that between the granting of such a permit and the identity of the goods with some specific importation into Mexico, there was a relation of dependence. The cotton must have been imported from the southern United States, and Rosenfield, who was probably the importer, informs the Mexican official, in his applications, what particular lot his present shipment is out of, viz: "Procediente de la imp'n No. 334." ("Proceeding from," or, "a part of the importation numbered 334.")

Johnson, the master, is instructed by Jenny, acting as owner of ship and cargo, to obey Schlickum. (Rec., p. 39.) So Jenny instructs Saunders & Son, Nassau, to obey further instructions of Schlickum. (Rec., p. 41.) Schlickum addresses a letter to Schlessinger & Co., New York, (Ibid,) and another to Saunders & Son Nassau. (Rec. 42.) He pays wages to Capt. Johnson, upon an agreement made with him at Matamoras, for his services in this trip to New York, but with a clause for obeying "the instructions given to him in regard to the vessel and cargo by C. F. Jenny." (Rec., pp. 42, 43.) Schlickum calls himself the the agent of Jenny in the matter, but it more likely Jenny was the agent of Schlickum.

These suspicions are met only by the form of the papers and letters found on board, particularly, of the apparently bona fide instructions to Schlessinger & Son, of New York, from Jenny, for a return cargo, etc.; the articles are studiously selected to look as inoffensive as possible, and the over-artful clause is subjoined: "As I order you only and expressly goods for the Mexican market, as you will see," etc. But the bill is introduced by the alternative language: "In case you could procure good freight for the schooner from New York back to here, $2 per bbl., or more, you will please do so: *otherwise*, to load the vessel on my account, with the following," etc. The words "New York" were evidently intended to be un-

derstood as designating another place, as the "$2 per bbl." freight, we learn, would have been ridiculous, from New York to Matamoras, but a not improbable figure from the West Indies to the latter place.

It remains, however, to point out that by all the instructions found on board for the conduct of the voyage, Saunders & Son "have charge of that," in Jenny's language, (Rec., p. 38,) after reaching Nassau; the "power of attorney" before referred to, being also transferred over to them and sent with the ship, to complete their plenary control, subject only, it would seem, to that of Schlickum, whose instructions to them were the last issued, dated 2d October. (Rec., p. 42.)

No ownership is anywhere alleged of ship or cargo for Hale & Co., save only in the bill of sale and power of attorney, the declaration of British nationality, and in the claim herein. Taking the other papers, the ownership of the vessel would seem to lie between Jenny and Schlickum; but it is not unlikely that the whole, both ship and cargo, was the property of the Confederate States, of which Schlickum and Rosenfield were the agents. To this point we invite notice to the letters of Mund, a person who, after the clearance, and at the last moment, came on board at Boca del Rio. This person claims to be a Prussian subject, but says he has resided at *San Antonio, Texas*, since 1846. (Rec., p. 9.) He was placed on board by Schlickum, doubtless for the purpose of explaining and supplementing the various letters of instruction on board. Schlickum introduces him thus to Saunders & Son, Nassau: "There is a passenger on board, Mr. L. Mund, who engaged his passage here for $80, and paid the same. He is a gentleman, and *acquainted with Mr. Jenny, and may give you such news from here as may interest you.*" In his letter purporting to be intended for Schlessinger & Son, New York, Schlickum thus introduces him: "P. S.—Mr. L. Mundt, who is recommended to you, goes as a cabin passenger to New York, who will find you out if he has any information to give you, and has promised to do so." (Rec., pp. 41, 42.) When captured he hastens to advise Schlickum and Charles Andre, of New Orleans, of

the causes of the capture. The letter to Schlickum seems to imply that he had been instructed, in case of capture, to make known the *grounds* thereof as early as practicable. He states in this letter (Rec., p. 43) that he believes the capture was in consequence of the disclosure, by some person from the French squadron, that the cotton of the Jenny "belonged to the *owners* of *the cotton of the Sir Wm. Peel.*" It is known that the "cotton of the Sir Wm. Peel" was once in the ownership of the Confederate government.

Finally, we call attention to the stipulated freight to be paid, as given in the bills of lading. It will be seen that they are *grossly inadequate* in amount for carriage from Matamoros to New York, especially at that period; (bills of lading, Rec., pp. 30, 31.)

CONCLUSION.

We simply submit, as unquestionable, the following conclusions of fact and of law upon this record:

1. The capture was a good capture, made in American interdicted waters, while the ship in suit and her cargo of cotton were in the act of attempting to run the blockade.

2. All the claims without exception are provisional claims only, in form and substance, not one of which has, in any manner, been ratified, recognized, or prosecuted by any one of the parties to whom ownership was therein imputed, either of ship or cargo, and consequently no claimants were in court when the adjudication was had, and no claimants are now here in court. The St. Lawrence, (1 Gal., 467; affirmed, 8 Cranch, 434.)

3. But if there be a regular claim in court it must be disallowed, since, in the case of each claim, there is an utter absence of affidavit, or specific averment, even in form, and none of them is supported by fact.

4. No evidence exists in the record respecting ownership, either of ship or cargo, but that of the papers and crew of the ship, which, in the first instance, controls the adjudication. The Dos Hermanos, 2 Wheaton, 76. Said evidence conclusively negatives each and all of the claims before the court.

5. The irrevocable power of attorney, so called, made by John P. Molony, as for Hale & Co., to Jacob Rosenfield, of Houston, Texas, was a sale to an enemy on its face. That the vessel remains enemy's property is a recognized presumption which the most indubitable evidence to be adduced by claimants can alone overcome. The Jenny, 4 Rob., 31, 101; The Omnibus, 6 Rob., 71. But here the proof in the record raises a violent suspicion in addition, that the papers throughout concerning title to the vessel are simulated, and that the pretended vendor to Hale & Co., Julius Schlickum, remained owner as before, and that he was an enemy in the employ of the Confederate States, which possibly owned the vessel.

The decree of restoration below should be reversed, and the record remitted, with directions to dismiss all the claims and enter a decree of condemnation of vessel and cargo. And the appeal of the claimants should be dismissed.

HENRY STANBERY.
J. HUBLEY ASHTON,
for United States.
C. EAMES,
for Captors.

Supreme Court of the United States.

No. 100.

THE UNITED STATES

vs.

THE SCHOONER JENNY AND CARGO.

BRIEF FOR CLAIMANT.

WILLIAM MARVIN, *Counsel for Claimant.*

New-York:
JOHN W. AMERMAN, LAW PRINTER,
No. 47 Cedar Street.
1867.

Supreme Court of the United States.

The United States *vs.* The Schooner Jenny and Cargo.	*No.* 100.

This vessel, John Johnson, master, laden with one hundred and fifty-four bales of cotton, was captured on the 6th day of October, 1863, off the mouth of the Rio Grande, soon after getting under way to go on her voyage to New-York. There were about fifty other vessels in sight at the time of the capture. She was captured by the United States steamer Virginia, and carried to New-Orleans for adjudication.

On the final hearing, the District Court of Louisiana ordered the libel to be dismissed, and the vessel and cargo restored to the claimants. From this decree the District Attorney, on behalf of the United States, appealed to this court. (See decree, pages 50–1.)

The master of the Jenny, intervening for the interest of the concerned, claims forty-four bales of the cotton for and on behalf of H. Fersenheim, who, he states, is a resident of New-York, (record, page 10,) seventy-one bales of the cotton, for and in behalf of Joseph Rosenfield, who, he states, is a resident of New Orleans, and a loyal citizen of the United States, but absent in Matamoras at the time of filing the claim, (page 11,) and thirty-nine bales for and on account of Messrs. Ruprecht & Fortner, residents of New-York, (page 12.)

The master also claims the vessel for and in behalf of Messrs. Hale & Co., who, he states, are British subjects, resident in Matamoras. (Page 13.)

Charles Andre, intervening for the interest of Augustus Starke, a loyal citizen of the United States, residing in Saltillo, in Mexico, claims thirty-nine of the bales of cotton for and in behalf of the said Starke. (Record, page 17.) Andre's authority for interposing the claim does not appear.

Conrad Seiler, intervening for the interest of R. M. Elkes, claims, on his behalf, forty-four bales of the cotton, and states that Elkes is a loyal citizen of the United States, formerly resident in New-York, but now residing in Mexico. (Record, page 18.) Seiler's authority for interposing the claim on behalf of Elkes, does not appear.

Three bills of lading are found in the record. The first (page 30) shows that Messrs. Groas, Blerchy & Co. had shipped on board the Jenny thirty-nine bales of the cotton, consigned to Messrs. Ruprecht & Fortner, in New-York.

The second bill of lading (page 31) shows that Charles F. Jenny had shipped on board the vessel seventy-one bales of cotton, consigned to order in New-York. The bill of lading is endorsed, "Deliver the within goods to Messrs. Hennings & Goesling, of New-York, or order. Swiss property insured through Messrs. Lemonier & Co., Liverpool," and signed, "Charles F. Jenny."

The third bill of lading (page 31) shows that C. F. Jenny had shipped on board the vessel forty-four bales of cotton, consigned to H. Fersenheim, in New-York, or to his assigns. This bill of lading is endorsed, "Deliver to R. M. Elkes, Esq., or order," and signed, "Charles F. Jenny."

The invoices show seventy-one bales shipped on board the vessel by Charles Fred. Jenny, consigned to order, for account of Charles Fred. Jenny in Matamoras.

Record, page 28.

Thirty-nine bales shipped by Groas, Blerchy & Co., consigned to Ruprecht & Co. in New-York.

Record, page 29.

Forty-four bales consigned to H. Fersenheim, New-York, for account of Charles Fred. Jenny.

Record, page 30.

The manifest of the cargo (page 25) shows the shipment of one hundred and fifty-four bales of cotton, consigned as in the bills of lading.

The documentary proofs concerning the vessel are: A bill of sale of the schooner "Southron," dated 21st April, 1863, reciting an American register, and given by Julius Schlickum before the United States Consul at Matamoras, conveying the vessel to Messrs. Hale & Co., of Matamoras, as she then lay in the port of Matamoras, for the consideration of $7,000, (record, pages 32, 33;) a certificate of the U. S. Consul at Matamoras declaring that the schooner "Southron," of New-Orleans, has been sold at that port, and that the register of the vessel had been cancelled by delivering one-half thereof to the master, and retaining the other half in the consulate, to be forwarded to the Register of the Treasury; a declaration of ownership made at Matamoras April 27th, 1863, by John P. Maloney, one of the firm of Messrs. Hale & Co., wherein he states that he and the other members of the firm are British subjects, and are entitled to be registered as the owners of the whole of the vessel, whose foreign name was the "Southron," (record, page 33;) a provisional certificate of registry, given by the British Vice-Consul at Matamoras the 27th day of April, 1863, registering the vessel by the name of the "Jenny," and in the names of Messrs. Hale & Co., merchants, in Matamoras, (page 33;) a general power of attorney from Messrs. Hale & Co., of Matamoras, to Jacob Rosenfield, merchant, of Houston, Texas, authorizing him to take charge of the schooner Jenny, formerly called the "Southron," and

to charter her, collect the freights, to sell and convey the vessel, with full power of substitution, &c., &c., dated 21st April, 1863, at Matamoras, and an endorsement thereon transferring the power to Mr. C. F. Jenny, signed by the attorney, Jacob Rosenfield, dated at Matamoras, September 12, 1863, (record, page 35;) and a further endorsement, signed by Charles Fred. Jenny, transferring the power to Messrs. Saunders & Sons, of the port of Nassau, (page 35;) two agreements with crew for a foreign going ship, the one dated at Havana, 21st July, 1863, showing the last voyage of the Jenny to have been from Havana to Matamoras, the other dated at Matamoras, September 16, 1863, showing that the voyage on which she had started and was captured was from Matamoras to New-York, *via* Nassau.

Record, pages 26–7.

In connection with the documents just referred to is a letter from Charles F. Jenny to Captain Johnson, master of the vessel, dated at Matamoras, 17th September, directing him, on his way to New-York, to put into Nassau, and there deliver to Messrs. Saunders & Son the inclosure. (Page 38.) The inclosure appears to be a letter, dated September 17th, 1863, from Mr. Jenny to Saunders & Son, (record, page 40,) informing them that the vessel is furnished with a provisional British register, expiring on the 27th of October, 1863, and requesting them to procure a definitive or permanent register, and, to enable them to do so, the writer incloses them the bill of sale of the vessel and the power of attorney, with the endorsements of substitution thereon. The letter also directs Messrs. Saunders & Son to sell the vessel, to be delivered in New-York, after discharging her cargo, for about $4,500, and, in case of sale, to remit the proceeds to the firm of Charles Fred. Jenny, in Chur, Switzerland. The letter also says that "if Mr. J. Schlickum, my agent at the Boca de Rio,*

* Boca de Rio, or Boca del Rio Grande, is the Spanish or Mexican name for the small village at the mouth of the river on the Mexican side, called oftentimes by Americans "Bagdad."

should give you some further instructions, please consider them as coming from me." Under date of October 2d, 1863, from Boca del Rio Grande, or Bagdad, which is at the mouth of the river, on the Mexican side, Mr. Schlickum wrote to Saunders & Son, (record, page 42,) in which he says: "Mr. Charles F. Jenny asked me to write you, and give you such instructions as I might think proper. You will please, by forwarding the documents to Messrs. F. S. Schlesinger & Son, to transfer also the power of attorney to these gentlemen, as they have instructions to sell the schooner, if a convenient chance could be found." On the same day, October 2d, 1863, and from the same place, Mr. Schlickum writes (page 41) to Messrs. F. S. Schlesinger & Son, N. Y., and says: "By order of and in the interest of C. F. Jenny, I take the liberty to inclose in this letter these few lines. I wrote to Messrs. Saunders & Son, in case this gentleman, up to the departure of the Jenny from Nassau, had not sold her, the power of attorney, executed in favor of this gentleman, shall be transferred to Messrs. Schlesinger, and will you, if the Jenny cannot be sold there, re-transfer the power of attorney to Mr. George F. Jenny." A letter was also found on board (page 38) from Ch. Fred. Jenny, dated September 15, 1863, addressed to H. Schlesinger & Son, in which he says: "I had eventually charged Messrs. Saunders & Son to sell the schooner for $4,500, but, as I doubt whether it could be done, I transfer the commission to sell the Jenny to you."

The bill of sale of the Jenny, from Julius Schlickum, dated 21st April, 1863, to Messrs. Hale & Co.; the declaration of ownership made by John P. Maloney, one of the firm of Hale & Co., made before the British Consul, April 27th, 1863; the consular certificate of British registry, and the power of attorney from Hale & Co., signed by one of the firm, all show that the legal title to the vessel was in Messrs. Hale & Co., of Matamoras; while the power of attorney and the letters of Charles F. Jenny seem to show that he had an equitable interest in the vessel. The captain of the

vessel, in his deposition *in preparatorio*, (pages 4–5,) says, "that the vessel belonged to Hale, Maloney & Co., of Matamoras, as far as I know—I do not know exactly. I was appointed master by Mr. Jenny. He is now in Matamoras, and lives there. I took possession of the vessel the 29th of May, 1863, on the Rio Grande, at the mouth of the river." "I first saw the Jenny five or six years ago, in Pensacola. I think she was American built, but do not know. Her name was the Southron when I first saw her. She was called so until her name was changed in Matamoras, when I took charge of her."

The bill of sale of the vessel from Schlickum to Hale & Co., of the 25th of April, 1863, recites an American register, wherein one P. A. Fronty, of New-Orleans, is stated to be the owner, issued from the Custom House, in New-Orleans, under date of the 18th March, 1863, about a year after that port had fallen into the hands of the U. S. Government and had been opened for trade.

The deposition of the master, taken *in preparatorio*, shows that he was born in Denmark, and owes allegiance to that kingdom. He lives at sea; has had no fixed residence since he went to sea. His last temporary abode was at Havana. He has known the vessel five or six years. He knows that she had no goods contraband of war or otherwise, prohibited by law, on board during her last voyage, except 400 bbls. of aguadiente, shipped from Havana to Matamoras. She had on board, at the time of the capture, 83 bales of cotton, taken on board inside the bar, and 71 bales taken on board outside the bar. He does not know who the cargo belonged to. He signed, he thinks, six bills of lading—say two sets. There was no colorable or false bills of lading signed that I know of. The vessel was bound to New-York by the way of Nassau.

On the first hearing of the cause, (page 25,) the District Attorney read in evidence the testimony taken *in prepara-*

torio, and the papers found on board the vessel, and after hearing counsel, the court took the matter under advisement.

On a subsequent day, (page 44,) the court heard the argument of the District Attorney in support of his claim for further proof on behalf of the captors, and that of the proctor for the claimants in opposition thereto, and it was thereupon ordered by the court, "that further proof be allowed touching the facts as to whether the vessel was in American waters or not when taken, and as to the character of her cargo upon her voyage to Matamoras and when taken."

The further testimony consists of the depositions of J. H. Rogers, (page 46,) N. A. Blume, (page 47,) and Frank E. Brackett, (page 48.) The depositions appear to have been taken in the absence of Mr. Briggs, the claimant's proctor and counsel, and have neither jurat nor name of the officer before whom they were taken attached. If admissible in evidence they simply prove—

That the vessel was captured north of the line dividing the waters of Mexico from the waters of the United States, and while under way with a head wind, or nearly so, beating out to sea, the wind being about east, and the vessel heading about north northeast.

On the 18th of June, 1864, the court made its final decree, ordering the libel to be dismissed, and the vessel and cargo restored to the claimants.

From this decree the District Attorney appealed.

On the 3d June, 1865, (see supplemental record,) the court, reciting in its decree that on the preliminary trial of the cause, considering that the position of the Jenny when captured was a matter of doubt, and with a view to set this matter at rest, the court allowed the captors further proofs, and that the result of the whole testimony satisfied the mind of the court that the Jenny was captured when anchored south of the line dividing the waters of the Rio Grande, and when, therefore, she was in neutral waters, and that on that

ground the court had decreed her restitution, but entertaining grave doubts as to the object of her voyage; so grave, that but for this consideration, that she was captured in neutral waters, the court would have decreed her condemnation. The court thereupon proceeded to decree "that the costs and charges consequent upon the capture be paid by the claimants, and that damages be refused."

From this decree the claimants appealed, and both appeals are now before the court.

Point I.

The decree restoring the vessel and cargo to the claimants ought to be affirmed, and the vessel and cargo restored; and the decree refusing damages for the capture and detention of the vessel and cargo ought to be reversed, and the cause remanded to the court below to ascertain and assess the damages. Because,

1st. There can be no ground on which to base a decree of condemnation of the ship or any part of the cargo, unless—

1st. The vessel or cargo were engaged in breaking the blockade. This is not true, for there was no blockade, in law or fact, at the mouth of the Rio Grande to break. To say that a port was blockaded when forty or fifty vessels were loading and unloading in the harbor or roadstead of that port, and in the presence of the United States vessels of war, and with the knowledge of the government, is simply absurd. Or,

2d. Unless the vessel was engaged in carrying contraband of war to the enemy, or had been so engaged in her late voyage to Matamoras, prosecuted with false papers and under a false destination. There is no proof of this, but the contrary. Or,

3d. Unless the ship or cargo, or some part thereof, was enemy's property. Of this there is no proof. As to the ship the legal title was in Hale & Co., who are respectable and

well-known merchants, residing at Matamoras; and if Mr. Jenny had an equitable interest in the ship, he also resided at Matamoras. Schlickum, his agent for some purposes, resided at Boca del Rio, or Bagdad, in Mexico. The ship ought to be restored without further proof. As to the cargo, the ownership of thirty-nine bales of it, marked A. S., shipped by Messrs. Groas, Blerchy & Co. to Ruprecht & Fortner, in New-York, are clearly ascertained by the bills of lading and by the invoice to be owned by the consignors or consignees, and the presumption of law is that they are owned by the latter, and they are claimed by the master for them. (Fitzhugh *vs.* Wiman, 9 *N. Y.* (5 *Selden*,) 559; 12 *Barbour*, 310; 16 *Barbour*, 72. Walley *vs.* Montgomery, 3 *East*, 585.) The presumption of law also is that the forty-four bales, shipped by C. F. Jenny, consigned to H. Fersenheim, 76 Beekman-street, belonged to the consignee, and they are claimed by the master for him. The endorsement on the bill of lading, made by the consignor, "Deliver to R. M. Elkes, or order," does not repel this presumption. The title is presumed to be vested by the bill of lading in the consignee, who alone can transfer the property by endorsement. These thirty-nine and forty-four bales ought to be restored to the claimants without exacting further proof. As to the seventy-one bales, shipped by Charles F. Jenny, and consigned to his order, the title seems to be in Messrs. Hennings & Goesling, of New-York, by the endorsement of the bill of lading.

Point II.

Sealing or anchoring in American waters, off the mouth of the Rio Grande, is in itself, and unaccompanied by any purpose to break blockade or to carry contraband of war to the enemy, no ground for condemnation or forfeiture. It is no violation of any principle of international law nor of any act of Congress. Mexico and the United States are entitled to the common use of the waters leading into or out of the Rio Grande.

We say, generally, that the transactions appear to have been between neutrals and friends, and no reasonable presumption of the existence of any enemy interest arises either as to the ship or the cargo, and both ought to be restored. But if the court should think otherwise, it will grant to any claimant whose interest is suspected to be hostile, leave to supply further proof, the cause having been decided in favor of the claimants in the court below, on grounds not involving a very rigorous inquiry into the proprietary interests.

Point III.

The claimants are entitled, on their cross-appeal, to have the decree refusing them damages for the capture and detention, and charging them with costs and expenses, reversed, and they are entitled to a decree in their favor for damages, costs and expenses.

Wm. Marvin,
Claimants' Counsel.